

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13-CHICAGO**

WGN-TELEVISION,

Employer

and

Case 13-RC-21929

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1220,**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

The International Brotherhood of Electrical Workers, Local 1220 (herein the Petitioner) seeks an election in an unit comprised of all full-time and regular part-time television producers assigned to CLTV, a cable television channel operated by WGN TV a unit of the Tribune Company.

The sole issue is whether the inclusion of a part-time CLTV live talk show producer, Jerry Riles, in the petitioned-for unit is appropriate. The Petitioner asserts that the petitioned-for unit of producers assigned to produce content for CLTV, which includes Riles, is an appropriate unit. There are nine producers in the unit sought by the Petitioner. The Employer, while agreeing that the eight full-time CLTV producers may constitute an appropriate unit, contends that including part-time producer Riles in the petitioned-for unit results in an arbitrary and

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

artificial grouping of employees that is not an appropriate unit as there are other producers excluded by the Petitioner that have a greater community of interest with the CLTV full-time producers than Riles.

II. Decision

Based on the entire record in this proceeding and for reasons set forth below, I find that the record establishes that Jerry Riles shares a sufficient community of interest with the CLTV producers to warrant his inclusion in the petitioned-for unit, and that his inclusion does not create an artificial grouping as the Employer contends. I, therefore, find that the petitioned-for unit, including Riles, is an appropriate unit under Section 9(b) of the Act and Board precedent.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and regular part-time WGN TV producers assigned to produce CLTV newscasts or other CLTV programming employed by the Employer at the Employer's facility located at 2501 Bradley Place, Chicago, Illinois; but excluding all other full-time or regular part-time WGN TV producers assigned to produce WGN newscast or WGN talk shows, including public affair shows, creative service writers and producers, special projects producers, interactive news producers for wgntv.com and cltv.com, graphic producers, graphic design artists, executive producers, senior producers, confidential employees, managers, official clerical employees and guards, professional employees and supervisors as defined in the Act.

The unit found appropriate herein consists of nine employees.

III. Statement of Facts

The Employer, WGN Television, is a television station with multiple channels that produces programming on a number of platforms, including WGN TV Channel 9, a local television station that airs news, programming, the CW network, and local sports available within the Chicago area; Channel 9.2, a digital channel with other programming; WGN America, a national channel that WGN TV operates portions of; CLTV, a 24-hour cable news channel available only on cable television; and wgntv.com and cltv.com. In August 2009, CLTV was essentially absorbed by WGN when CLTV production and business offices in Oak Brook, Illinois were shut down and CLTV was moved into the Chicago facility that houses WGN TV. CLTV's move from Oak Brook to Chicago was for economic, real estate, and strategic reasons. As a result of the move, the resources and operations of WGN TV and CLTV were combined to be more efficient and better coordinated.

WGN TV has a large integrated newsroom where approximately 140 employees work to produce WGN and CLTV newscasts and several other content broadcasts, including some talk shows. The heart of the newsroom work area is made up of tables (referred to as "pods") and desks where employees develop and produce content for WGN and CLTV newscasts and other programming. WGN producers, CLTV producers, WGN newscast production crew, and writers

all work at their respective pods in the newsroom. Desks located to the right of the pods are used by a variety of people such as on-air talent, other producers, writers, and staff. Writers produce content that is used for both WGN and CLTV channels. Jerry Riles, the part-time CLTV producer who produces the Gerard McClendon Show every weeknight, works in the newsroom at a desk near the CLTV producers' pod and the host, Gerard McClendon, works directly across from Riles. The WGN assignment desk and web producers are located in the area to the left of the pods. The assignment desk staff coordinates the field logistics involved with the news gathering and assignments for the crews in the field. Specifically, the assignment desk staff figures out where and when the field crews need to be, determines what news is happening in the field, and determines how it will or will not be covered. The CLTV set is located in the corner of the newsroom near the rows of desks and on-air talent offices. The exterior offices of the newsroom floor are used for news management, on-air talent, sports producers, a health producer and talent, video editing, a breakroom, a make-up room, and restrooms.

Producers execute newscasts and other programming in the control room. The nine WGN employees assigned to produce CLTV newscasts (herein "CLTV producers") and other CLTV programming, such as the Gerard McClendon Show, use the CLTV control room that is currently located on the second floor of the building. The CLTV control room is used solely by those who produce content for CLTV. WGN producers who work on WGN newscasts (herein "WGN producers") have their own control room on the first floor and do not spend any significant time on the second floor. The Employer is currently in the process of relocating the CLTV control room to the first floor adjacent to the WGN control room. The functions and use of the new CLTV control room will remain the same as the current one.

A. CLTV Producers

CLTV producers are responsible for about two to four hours of broadcasting time in a day and the majority of that broadcasting time consists of pre-recorded content. About half of the CLTV producers' day is spent gathering content, making editorial decisions, and building a production rundown of the content that they are going to use in the newscast they are responsible for producing. A rundown is a guideline for programming segments called blocks and the producers determine how many blocks to have for each show and what the content for each block will be. In making editorial decisions, the CLTV producers interact with CLTV senior producers about selecting editorial content, interact with news management depending on the story and issue of the day, and interact with assignment desk staff and others in the newsroom, such as on-air talent. CLTV producers also make journalism decision related to fairness and accuracy of the content that they are presenting in their newscast. CLTV producers interact with the assignment desk to understand the logistics of field crews and to find out when crews will be delivering information for the content blocks they are producing. Although the field crews provide content for both WGN and CLTV, the CLTV producers' interaction with the field crew is not as extensive as that of the WGN producers because most of the field reporting is done for the WGN newscasts, which are live and not pre-recorded.

Once CLTV producers determine the content they are going to use for the blocks of programming they are responsible for producing, they go to the control room and pre-record each story, one at a time, with the on-air talent. The pre-recorded stories are then put on a server

to be played back as an automated newscast on CLTV. CLTV producers may also work with a technical director or a second producer in the control room. The day-to-day work of the CLTV producers is supervised by senior producers and Assistant News Director Jen Lyons, who reports to News Director Greg Caputo.

Although the bulk of the CLTV newscasts are pre-recorded, CLTV producers do occasionally produce live programming, such as when there is a breaking news situation. CLTV producers may do about 30 minutes of live programming a day to as much as several hours, depending on the news.

CLTV producers must cover a schedule of operations that is 24 hours a day, 7 days a week, so they rotate through the shifts with each other and generally work 40 hours a week, 5 days a week. CLTV producers are paid a salary and are eligible for health insurance, vacations, and holidays among other benefits. No CLTV producer has been promoted since its integration with WGN, but if one was to be promoted a possibility would be to the position of a WGN supervising producer.

CLTV producers interact closely with one another and are often teamed up on a shift working as partners or work in overlapping shifts with one another. Depending on the quantity of work that needs to be done, CLTV producers may divide up the work of a shift and reproduce the content as a team rather than as an individual. CLTV producers are interchangeable with one another as they have the same basic skills and job responsibilities. The pool of writers have similar skills and training to fill in for CLTV producers, if necessary. There has not been a situation where Riles has been asked to fill in or help perform the work for a CLTV producer.

B. Jerry Riles

Jerry Riles is the producer for the Gerard McClendon Show, a half-hour CLTV talk show that airs live at 6:00 p.m., Monday through Friday. The show replays at 9:30 p.m. and two other times on Saturday evenings. The only time that the show does not air is when it is preempted by a sports event or when the host, McClendon, is not available. The Gerard McClendon Show does not air on any channel other than CLTV. Riles was hired when CLTV was looking for someone to help recruit guests and who had experience finding and booking guests in Chicago. Riles had previously worked at several Chicago area radio stations and sports shows, and knew a wide range of people in Chicago.

Riles' job duties are fairly extensive—he is responsible for selecting the topic for each show and making the determination of what is in the best interest of the viewing audience. Riles communicates with the other CLTV producers to determine if there is breaking news or some other issue that may be an appropriate topic for a particular day's show. Riles spends most of his day in the newsroom working on the show, and often collaborates with McClendon to develop the content, book the guests, and execute the show. Once a topic is selected for a show, Riles is responsible for booking guests to appear on the show and creating a rundown for the show. Riles determines how many blocks to have for each show and what the content for each block will be. Riles determines the type of video that may be relevant for a particular show, the types of questions to pose for viewers, when to place the guests in the show, and when to take viewer

calls. Riles also loads the teleprompters for the show daily. Riles spends the remainder of his work day in the control room executing the show. During the live broadcast, Riles is in the control room to communicate with CLTV to make sure everything goes smoothly. During the show, other employees, such as a technical director, an audio person, a form screener, a call screener, and occasionally an intern, may be in the control room with Riles. The Gerard McClendon Show has definite start and end times, and commercial breaks. Riles does not have authority to break in on commercials and substitute news which impacts revenue.

Riles has never done a pre-recorded newscast at CLTV. However, he has pre-recorded his own shows for future use at CLTV, which had been done fairly frequently for about a year to year and a half of the show before the decision was made to produce as many live shows as possible. When his shows are pre-recorded, Riles uses the same equipment that CLTV producers use to pre-record their newscasts. CLTV producers and Riles use Final Cut Pro, a video editing program and the TONS server (a video server) to search, find, and sometimes edit relevant video footage for a topic or issue on the show being produced. CLTV producers and Riles also use a graphic system called DEKO to create full screen graphics for their broadcasts. CLTV producers, including Riles, all use a computer program called ENPS to communicate when developing content for programming. ENPS is the place where the news desk sends information to keep the newsroom updated.

Although Riles works fairly independently, Riles' day-to-day work is supervised by Lyons or the news director Greg Caputo. Riles also interacts with the senior producers (who supervise CLTV producers) if there is a logistical or technical problem. Depending on the issue, Riles may also refer to Steve Farber (who was general manager of CLTV before his very recent promotion to VP Operations for WGN TV).

Riles has a work schedule that is unlike any other employee in the newsroom. Although Riles is a part-time employee, he usually works five days a week since the Gerard McClendon show airs five nights each week. Even when the show is preempted by another broadcast or McClendon is not available to do a show, Riles still comes in to work on future shows. Unlike other regular part-time employees who are assigned a work schedule that includes start and end times, Riles does not have a set start and end times. Although he was initially given the work times of 11:00 a.m. to 7:00 p.m., Riles now decides when to come in and leave. Riles is paid a daily rate—approximately \$165.00 per day, regardless of the hours that he works, although Riles typically works at least eight hours a day. Other part-time employees are paid hourly. Riles also does not receive any fringe benefits such as insurance or paid time-off, like vacations or holidays.

There has never been a situation where another CLTV producer has substituted for Riles to produce the show. However, in the event that someone needed to fill in for Riles, one of the current CLTV producers, L.J. Tabano, would be the logical choice, since Tabano previously produced the Gerard McClendon Show. When Riles began working for CLTV in Oak Brook, Tabano was the producer who trained Riles. Tabano and Riles also produced the Gerard McClendon Show together until CLTV moved to Chicago, at which time Tabano was moved to the news department as a CLTV producer.

IV. Analysis

The only issue is whether Riles' part-time CLTV producer position can be included within the full-time CLTV producers unit as sought by the Petitioner, or whether his inclusion would create an artificial and, therefore, inappropriate unit.

The Act does not require that the bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured "the fullest freedom in exercising the rights guaranteed by this Act." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950) *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, there is more than one way in which employees of a given employer may appropriately be grouped for the purposes of collective bargaining. *Rohtstein Corp.*, 233 NLRB 545, 547 (1977).

The Board's procedure for determining an appropriate unit is to first examine the petitioned-for unit. See, *e.g.*, *The Boeing Co.*, 338 NLRB 152, 153 (2001). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P. J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). A unit is appropriate where employees in the unit have a separate community of interest from other job classifications. *Boeing Co.*, 338 NLRB at 153.

Upon the record evidence in this case, I find that the otherwise agreed upon unit of full time CLTV producers is not rendered inappropriate by including the part-time producer, Riles, in the bargaining unit. According, the petitioned-for unit, including Jerry Riles, constitutes an appropriate unit for the purposes of collective bargaining. I reach this finding after considering factors such as Riles' job functions, skills, and working conditions, which show that Riles shares a sufficient community of interest with the CLTV producers that is distinct from other producers not included in the unit..

The record clearly shows that Riles works in the same newsroom as the CLTV producers, has access to and interacts with the assignment desk staff, works in the same control room that only the CLTV producers use, and shares the same parking lot, break rooms, and restrooms with the CLTV producers. Although Riles' work area in the newsroom is located about 10 to 12 feet from the pod where the CLTV producers work, he interacts with them daily to communicate about any day-to-day news or breaking news happening that may provide direction for the Gerald McClendon show that day. In order to perform their job functions, CLTV producers and Riles all have regular contact and interaction with the assignment desk staff, immediate supervisors in the newsroom, and other CLTV producers. CLTV producers and Riles are all supervised by and report to Assistant News Director Lyons, as well as News Director Caputo. Both groups also report to senior producers, although the CLTV producers have more extensive contact with them than Riles does. Everyone in the petitioned-for unit uses the same programs for video, graphics, and communications. Although Riles is not assigned a regular schedule, during the times when Riles is at work, there are CLTV producers working alongside him due to the fact that CLTV producers rotate shifts to cover the newsroom 24 hours a day, 7 days a week.

While there has been no interchange between Riles and the CLTV producers, there is no question that Tabano, a CLTV producer, is able to perform Riles' duties in his absence.

Each employee in the petitioned-for unit spends a significant portion of the work day developing, producing, and executing content for original broadcast on CLTV in the same newsroom. CLTV producers and Riles have a wide range of latitude to determine the content that will go into the programming they each produce. The Employer draws a distinction in the type of content that CLTV producers are responsible for (pre-recorded) and the type of content that Riles produces (live). However, CLTV producers could, on any given day, be responsible for producing several hours of live programming, depending on the news situation that day. And while the majority of the content that Riles produces is live, he has the knowledge and ability to pre-record his own shows for future use by using the same equipment used by CLTV producers in pre-recording their newscast stories. Further, this was something that Riles had done for a significant time during his employment with CLTV, before the goal was set to do live shows as often as possible.

Contrary to the Employer, I do not find that including Riles in the petitioned-for unit results in an arbitrary and artificial group of employees that makes the unit inappropriate. The Employer contends that Riles shares a greater community of interest with the WGN newscast producers, the WGN segment producers, or the WGN sports producers than with the CLTV producers. However, its contention is primarily based on job function distinctions between producing mostly live broadcasts (Riles and the WGN producers) and producing pre-recorded broadcasts (CLTV full-time producers). The Employer's contention does not take into account the significant differences between Riles and those categories of WGN producers regarding other terms and conditions of employment beyond the job functions they perform. For example, WGN producers use an entirely different control room that is used only by those who produce content for WGN and not CLTV. Riles' job location and daily interactions with other employees is aligned with the CLTV producers. That Riles' predecessor is now a CLTV news producer demonstrates that job function differences are not that significant in determining a line of job progressions.

While the Employer contends that Rile has some terms and conditions of employment that are different from those of the full-time CLTV producers, those differences are also unique to the other WGN producers which the Employer contends he shares a community of interests. The fact that Riles' position is unique because he shares some level of community of interests with various possible groupings of producers and that he has some distinctions from all such groups makes it possible to place him in more than one appropriate unit without rendering any such units inappropriate. As Riles shares a sufficient community of interests with the unit sought by the Petitioner and the Petitioner seeks his inclusion in the unit, he may appropriately be included in the unit.

V. Summary

Based on the foregoing and the entire record herein, I find that the unit as petitioned-for is an appropriate unit consisting of all full-time and regular part-time CLTV producers and that Jerry Riles is properly included in the petitioned-for unit.

VI. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 1220. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **June 4, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,² by mail, or by facsimile transmission at [insert Region's fax number]. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** [increase number of copies as appropriate] copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **June 11, 2010**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

² To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

DATED at Chicago, Illinois this 28th day of May, 2010.

/s/ Joseph A. Barker

Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
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CATS — Unit – Other Scope/Definition
Blue Book – 460-5067-4200-0000; 460-5067-4250-0000